the surrounding circumstances pointed inevitably to the fact that the District Forest Officer had been induced so to act, it is clearly undesirable in a criminal case that the best possible evidence, in this case that of the District Forest Officer, should not have been called to substantiate one of the main allegations in the charge.

But the most pertinent objection of all was that the action of the appellant in not returning these dishonoured cheques to the District Forest Officer as soon as they were received was an action which had taken place at a point of time after and not contemporaneously with or before that at which Toh Wai Teng had done the acts which were alleged in the charges to constitute the offences which the appellant was supposed to have abetted. It could not accordingly be said that the actions of the appellant, whatever their motive, in the absence of any evidence of contemporaneous or prior complicity, were actions abetting the actions of the 1st accused which were alleged to justify the charges of cheating the District Forest Officer. The offence of abetment corresponds as nearly as one word can be said to correspond to another to the offence which is known in England of being an "accessory before the fact". It has no reference to "accessories after the fact".

In all the circumstances, therefore, it came as no surprise that the learned Deputy Public Prosecutor felt himself unable to support the conviction, and I agreed with his reasons.

Accordingly, I allowed the Appeal. The learned President had convicted the appellant on all three charges and then purported to bind the appellant over under section 173A of the Criminal Procedure Code. This was wrong, as binding over under section 173A of the Criminal Procedure Code cannot be ordered after a conviction has been recorded. I quashed the convictions and the order of binding over.

As in these circumstances the conviction against Toh Wai Teng could not be permitted to stand, I dealt with his case on revision, and quashed the convictions and sentences of fines of $400, $300, and $300 respectively on him and ordered the sum of $1,000 to be repaid.

Convictions quashed.

Solicitors: *Rodyk & Davidson.*

TUONG SOON HIN v. PUBLIC PROSECUTOR

[A.Cr.J. (Neal J.) March 20, 1960]

[J. B. — Criminal Appeal No. 43 of 1960]

Road Traffic — Hired car — Permit to operate from place stated — Whether picking up non-paying passenger at another place on request of hirer amounted to breach of permit.

The appellant was convicted on a charge of using his taxi in breach of the conditions attached to his Permit which authorised him to take passengers from Scudai to Johore Bahru, by taking 3 passengers from Gelang Patah to Johore Bahru. The appellant gave evidence on affirmation, stating that he had been hired at his base as fixed in his permit by a passenger to drive from the base at Scudai to Gelang Patah and back, that at Gelang Patah the hirer had brought two additional passengers into the taxi and arrangements had been made between the original hirer and the appellant to take all three of them to Johore Bahru. His evidence was corroborated by the person with whom he had the hiring.

Held: it was not a breach of the permit for the operator of the vehicle, at the request of the hirer to take on additional non-paying passengers.

Obiter: the appellant would have been operating from his base if he received a telephone call from a hirer to pick him up at a place other than the place named, and that he would also be operating from that base if he received a message emanating from a charterer.

MAGISTRATE'S CRIMINAL APPEAL.

Abdullah bin Abdulrahman for the appellant.

Pawan Ahmad (Deputy Public Prosecutor) for the respondent.

Neal J.: The appellant was convicted by the Magistrate, Johore Bahru, on the 20th July, 1959, in respect of the following charge:—

"That you on 11th June, 1959, at about 4.30 p.m. at Gelang Patah New Village, in the Police District of Gelang Patah, in the State of Johore, being the driver of a Public Service Vehicle No. K. 5338, did use the said vehicle in breach of the conditions attached to the P.S.V. Permit No. 17925 which authorised you to take passengers from Scudai to Johore Bahru, to wit, by taking 3 passengers from Gelang Patah to Johore Bahru and that you have thereby committed an offence punishable under Regulation 7 of the Motor Vehicles Commercial Use Regulations, (G.N. 30/45)".

Before me the appellant relied upon the following grounds of appeal:—

"(iii) The Permit P1 does not prohibit the permit holder from taking on passengers at the places alleged in the charge;

(iv) There was no evidence that P.W. 2 and P.W. 3 paid separate fares to constitute contravention of conditions of the Permit."

The evidence adduced before the Court below showed that the appellant was seen driving taxi No. K. 5338 out of the town of Gelang Patah towards Johore Bahru by a police corporal, who stated that he stopped the appellant, examined his permit (which was produced) and that he had seen the appellant pick up passengers (number not stated) at Gelang Patah. The prosecution also called two of the three passengers in the taxi, who stated that they got into the taxi at Gelang Patah, but they do not appear to have been asked as to the circumstances under which they got into the taxi.

When called upon to enter on his defence, the appellant gave evidence on affirmation, stating that he had been hired at his base as fixed in his permit, by a Chinese passenger to drive from the base at Scudai to Gelang Patah and back, that at Gelang Patah the hirer had brought two additional passengers into the taxi, and arrangements had been made between the original hirer and the appellant to take all the three of them to Johore Bahru. His evidence was corroborated by the person with whom he had the hiring.

At this stage I am aware that the Court below rejected the evidence of the defence on the

ground that the two persons in the taxi called upon by the prosecution had never mentioned that they were friends of the person who had hired the taxi. That is perfectly true, but it is equally true from the record that they were never asked. In my opinion the Magistrate was wrong in rejecting the evidence of the defence on the ground that he did so reject it.

Apart altogether from the rejection of the evidence of the appellant and his witness, I am of the opinion that the Magistrate was also wrong when he stated as a legal proposition that Exhibit P1 permitted the appellant to pick up passengers only at his authorised base at Scudai. In the statement construing the appellant's permit, the Magistrate appears to have been following the expression of opinion of the police corporal (PW 1) when he stated "According to P1 that the base is at police station Scudai — he can pick up passengers from Scudai to go to Gelang Patah or go to Johore Bahru. Defendant cannot pick up passengers at Gelang Patah. He can drop passengers at Gelang Patah".

A condition of the permit, a breach of which was apparently alleged, is condition 2 which reads:—

"2. The authorised vehicle shall operate from the following place which shall be deemed for all purposes to be the base from which it shall be operated . . ."

In the first place this condition must mean operate a hackney carriage. In my opinion it would not be a breach of the condition of the permit for the operator of the vehicle, at the request of the hirer, to take on additional non-paying passengers. Again, in my opinion, the construction placed by the police corporal and the learned Magistrate on the word "operate" is far too restricted. To my mind the appellant would have been operating from his base if he received a telephone call from a hirer to pick him up at a place other than the place named in the permit, and he would also be operating from that base if he received a message emanating from a charterer. I do not intend to provide a definition of the word "operate" but I am of the opinion that the condition, if it is being sought to impose one so stringent as that advocated by the police corporal and the learned Magistrate, should be redrafted. On the prosecution case the prosecution failed in my opinion to prove that the appellant had operated from any other place than his base stipulated in condition 2 above.

Accordingly the appeal is allowed, the conviction is quashed, and the fine, if paid, should be refunded.

Appeal allowed.

Solicitors: *Murugason & Co.*

LEE SWEE TEE v. PUBLIC PROSECUTOR

[A. Cr. J. (Rigby J.) April 4, 1960]

[Penang — Criminal Appeal No. 6 of 1960]

Gaming — Charge of "assisting in the management of a public lottery," Common Gaming Houses Ordinance, 1953.

Criminal Law and Procedure — Amendment of charge — Whether desirable at appellate stage.

In this appeal the appellant was convicted on a charge of "assisting in the management of a public lottery".

Held: there was no such offence created under the Common Gaming Houses Ordinance, 1953. The charge was bad in law since it disclosed no offence, and the trial and consequent conviction was a nullity.

On the facts the appellant could have been charged with the offence of "assisting in carrying on a public lottery". The Court considered whether at the appellate stage it ought to amend the charge. However in view of the provisions of the Criminal Procedure Code that before any amendment to a charge is made such amendment should be read and explained to the accused who should then be called upon to plead to the charge as amended, no amendment should be made.

Cases referred to:—

(1) *Chong Chee Pak* v. *Public Prosecutor* [1948-49] M.L.J. Supp. 45.

(2) *Quek Ching Kim* v. *R.* [1956] M.L.J. 54.

MAGISTRATE'S CRIMINAL APPEAL.

A. Jayadeva for the appellant.

L. A. Massie (Deputy Public Prosecutor) for the respondent.

Rigby J. (delivering oral judgment): The learned Deputy Public Prosecutor, Mr. Massie, quite rightly concedes that on the authorities he cannot support the conviction in this case and that the appeal ought to be allowed. The result is singularly unfortunate since the appeal itself is wholly devoid of any merits on the facts.

The appellant was charged, together with two other persons, with assisting in the "management" of a public lottery, to wit, 100, 1,000, and 10,000 character lotteries, contrary to the provisions of the Common Gaming Houses Ordinance, 1953. Under the provisions of that Ordinance there is no such offence created as "assisting in the management of a public lottery". The charge, therefore, was bad in law since it disclosed no offence, and the trial and consequent conviction was a nullity. (See the case of *Chong Chee Pak* v. *Public Prosecutor* (1)). The appellant on the facts could, and should, have been charged with the offence created under the provisions of the Ordinance of "assisting in carrying on a public lottery". I have seriously considered whether in the interests of justice I ought not to amend the charge at this stage and, on the facts, convict the appellant of what would have been the correct charge of assisting in carrying on a public lottery. But the same point fell for consideration before Whyatt C.J.,